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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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12 JOHN DOE, an individual,) CV 19-00750-RSWL-SSx
13 Plaintiff,)
14)
15 v.) ORDER re: Defendant
16) Fowler's *Ex Parte*
17 KEVIN SPACEY FOWLER, an) Application for an Order
18 individual, M. PROFITT) to Set Deadlines Under
19 PRODUCTIONS, INC., a) Rule 26 [31]
20 California Corporation, and)
21 DOES 1-9, inclusive,)
22)
23 Defendants.)
24)
25)
26)
27)
28)

21 Currently before the Court is Defendant Kevin
22 Spacey Folwer's ("Defendant") *Ex Parte* Application for
23 an Order to Set Deadlines Under Rule 26 Due to
24 Plaintiff John Doe's ("Plaintiff") Willful Refusal to
25 Timely Engage in the Required Rule 26(f) Conference
26 [31] ("Application"). Having reviewed all papers
27 submitted pertaining to this Application, the Court **NOW**
28 **FINDS AND RULES AS FOLLOWS:** the Court **DENIES**

1 Defendant's Application.

2 **I. BACKGROUND**

3 On September 27, 2018, Plaintiff filed his
4 Complaint in state court against Defendant Fowler [1-
5 1]. After Defendant was served on January 3, 2019 [1-
6 4], he removed this Action to this Court on January 31,
7 2019 [1]. On February 7, 2019, Defendant filed a
8 Motion to Dismiss Plaintiff's Complaint [8]. On
9 February 19, 2019, Plaintiff filed a First Amended
10 Complaint [14] alleging claims relating to sexual
11 battery and gender violence, and also adding Defendant
12 M. Profitt Productions, Inc. ("Profitt") as a defendant
13 in this Action. On March 1, 2019, Plaintiff filed a
14 Motion to Proceed Anonymously [19]. However, on March
15 4, 2019, Plaintiff then filed a Motion to Remand [21]
16 arguing that the newly added Defendant, Profitt,
17 defeats diversity. Nonetheless, on March 5, 2019
18 Defendant filed a Motion to Dismiss Plaintiff's Claims,
19 or, Alternatively, to Require Plaintiff to Provide a
20 More Definite Statement—namely that Plaintiff disclose
21 his identity [22]. Defendant also filed a Motion for
22 Order for Misjoinder re Defendant Profitt [26] that
23 same day. The parties agreed and stipulated to have
24 all of the pending motions heard on April 16, 2019
25 [29]. Finally, on March 14, 2019, Defendant Fowler
26 filed the instant Application [31]. Plaintiff timely
27 opposed the following day [32].

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II. DISCUSSION

Defendant requests that the Court issue an order that: (1) sets a scheduling conference under Rule 16(b) for April 16, 2019; (2) requires the parties to engage in a Rule 26(f) conference as soon as practicable, but no later than 21 days before the April 16, 2019 scheduling conference; (3) requires the Rule 26(f) conference to be overseen by Magistrate Judge Segal; (4) requires the parties to file a Rule 26(f) report and serve initial disclosures within 14 days after the parties' Rule 26(f) conference; (5) requires Plaintiff to immediately disclose his real identity; and (6) imposes a monetary sanction of \$2,600 against Plaintiff and his counsel for conduct Defendant argues necessitated bringing this Application. Def.'s Appl. 6:5-7:10, ECF No. 31.

Defendant argues that Plaintiff and his counsel's refusal to comply with Federal Rule of Civil Procedure ("Rule") 26(f)'s requirement that the parties engage in a conference warrants *ex parte* relief because it has delayed the opening of discovery and disclosure, thus prejudicing Defendant. Defendant argues that Plaintiff's apparent motive is to delay revealing his identity to Defendant. Specifically, Rule 16(b)(3) requires a court to issue a scheduling order "within the earlier of 90 days after any defendant has been served with the complaint or 60 days after any defendant has appeared." Fed. R. Civ. P. 16(b)(2).

1 Because Defendant Fowler filed a Notice of Removal on
2 January 31, 2019, thus appearing in this Action, the
3 deadline for the Court to issue a scheduling order is
4 April 1, 2019. Under Rule 26(f)(1), the parties must
5 confer "at least 21 days before a scheduling conference
6 is to be held or a scheduling order is due under Rule
7 16(b)." Fed. R. Civ. P. 26(f)(1). As such, Defendant
8 argues that the deadline for the parties' Rule 26(f)
9 conference was March 11, 2019, but that Plaintiff
10 refused to comply arguing that no conference should
11 take place until after April 16, 2019—the hearing date
12 for the pending Motions.

13 The Court finds Defendant's Application to be
14 premature and improper for *ex parte* relief. *Ex parte*
15 applications are for extraordinary relief. For *ex*
16 *parte* relief to be granted, "the evidence must show
17 that the moving party's cause will be irreparably
18 prejudiced if the underlying motion is heard according
19 to regular noticed motion procedures." Mission Power
20 Eng'g Co. v. Cont'l Cas. Co., 883 F. Supp. 488, 492
21 (C.D. Cal. 1995). The Court need not delve into the
22 parties' arguments regarding the Rule 26(f) conference,
23 because any such issues shall be delayed until the
24 Court decides Plaintiff's Motion to Remand. Any time,
25 effort, and resources dedicated to a federal discovery
26 plan would be wasted should the Court determine it
27 lacks jurisdiction. Defendant's only argument as to
28 prejudice is that the opening of discovery is delayed,

1 however this is not the type of irreparable prejudice
2 requiring *ex parte* relief. See Mission Power Eng'g
3 Co., 883 F. Supp. at 491-92 (*ex parte* applications are
4 reserved for instances such as those where "the
5 tomatoes are about to spoil or the yacht is about to
6 leave the jurisdiction and . . . all will be lost
7 unless immediate action is taken."). Scheduling
8 disputes certainly do not rise to the level of
9 emergency required for *ex parte* relief, as any passed
10 deadlines can later be corrected by the Court. And
11 Defendant's request to order Plaintiff to reveal his
12 identity is inappropriate given that Plaintiff's Motion
13 to Proceed Anonymously is currently pending with the
14 Court. Consequently, the Court finds *ex parte* relief
15 improper at this stage and **DENIES** Defendant's
16 Application.

17 **III. CONCLUSION**

18 Based on the foregoing, the Court **DENIES**
19 Defendant's Application.

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21 **IT IS SO ORDERED.**

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23 DATED: March 18, 2019

s/ RONALD S.W. LEW

24 **HONORABLE RONALD S.W. LEW**
25 Senior U.S. District Judge
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